STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6882

Investigation into Public Access Line Rates of Verizon New England Inc., d/b/a Verizon Vermont	))	Hearing at Montpelier, Vermont April 2, 2004

Order entered: 10/21/2005

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I. Introduction

This investigation examines the rates charged by Verizon New England, Inc., d/b/a Verizon Vermont ("Verizon"), for public access lines ("PAL")(including public access smart lines ("PASL"). These lines provide service to payphone service providers ("PSPs"), including Verizon's own payphone subsidiary. The PAL rates thus establish one significant element of the costs of providing payphone service in Vermont. All parties to this proceeding recommend reductions to the PAL and PASL rates, although they disagree as to the magnitude of those reductions.

In this Proposal for Decision, I find that neither New England Public Communications Council ("NEPCC") nor Verizon have demonstrated that the rates they propose to charge are cost-based and thus, just and reasonable. The cost analyses that NEPCC and Verizon presented both have flaws; the evidence shows that the appropriate rate lies in between the positions advocated by these parties. One option would be to require Verizon to produce a new cost study, consistent with the requirements enunciated by the Federal Communications Commission ("FCC") and the conclusions I set out herein. For several reasons, I conclude that such an approach is unwarranted and instead recommend that the Public Service Board ("Board") set rates at approximately the mid-point between the positions advocated by Verizon and NEPCC. Cost studies are expensive. Moreover, production of cost studies would likely lead to further litigation and would further delay implementation of the PAL rate changes. Finally, the likely outcome of such further analysis would be rates very close to those I recommend the Board adopt. Considering the fact that the number of payphones in Vermont is not large and that the difference between Verizon and NEPCC is relatively narrow, incurring the expense of performing the studies and further litigation makes little sense. Accordingly, I recommend that the Board direct Verizon to reduce the PAL rates to $12.72 per month (exclusive of the Subscriber Line Charge ("SLC") and the per minute rate for usage on the PAL lines to 2.2 cents per minute at peak times and 0.5 cents per minute off-peak.[1]

1. These usage rates mirror the existing rates for local measured service charged by Verizon.

II. Procedural History

On September 26, 2002, NEPCC filed a letter with the Board requesting that the Board initiate a proceeding to establish Verizon's payphone access rates consistent with requirements of Section 276 of the Telecommunications Act of 1996 (the "Act"), as implemented by the FCC. That section of the Act prohibits Verizon from subsidizing its payphone service directly or indirectly from its telephone exchange operations or its exchange access operations, and from preferring or discriminating in favor of its own payphone service. NEPCC asserted that, based on its preliminary analysis, Verizon's existing PAL rates may exceed rates that would comply with the Act by as much as 70%.

On October 30, 2002, the Department of Public Service ("Department") recommended that the Board open a formal investigation of Verizon's PAL rates. The Department suggested in its request that NEPCC's preliminary analysis of Verizon's PAL rates was reasonably consistent with FCC guidelines and, thus, a formal investigation was warranted.

At the time NEPCC's and the Department's requests were made to the Board, the law was unsettled because the FCC's interpretation of Section 276 of the Act was under review in an appeal to the United States Court of Appeals for the District of Columbia. Consequently, the Board concluded that it would not be productive to open the investigation until the appeal was resolved.

In July, 2003, the Court of Appeals issued an order upholding the FCC's interpretation of Section 276.[2] As a result, on September 18, 2003, the Board opened this investigation into the reasonableness of Verizon's payphone access line rates, pursuant to 30 V.S.A. §§ 2, 203, 209, 218(c) and 227 (b). I convened a prehearing conference on September 29, 2003, and an informal workshop on October 23, 2003. Based on the schedule established by the parties, as revised, NEPCC, Verizon, and the Department engaged in discovery and submitted prefiled testimony. A technical hearing was held on April 2, 2004.

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2. *New England Public Communications Council, Inc. v. FCC*, 334 F.3d 69 (D.C.C.ir. 2003).

III. Criteria for the Decision

In large part, the Board's decision in this proceeding is guided by Section 276 of the Act and the FCC's interpretations of that Section through regulations and Orders. Section 276 established a federal regulatory scheme to promote competition among payphone service providers and to promote deployment of payphone service. To help foster competition, the Act prohibited discrimination by a Bell Operating Company ("BOCs") "in favor of its payphone service," and proscribed BOCs from subsidizing their services.

Beginning in the fall of 1996, the FCC issued a series of Orders[3] interpreting the provisions of the Act. The FCC ruled that PSPs were retail customers of telephone companies, not wholesale customers, which made them ineligible to purchase unbundled network elements ("UNEs").[4] Of particular relevance to this proceeding, the FCC established standards concerning the pricing of public access lines provided by telecommunications providers. The FCC specified that payphone service rates must be cost-based, non-discriminatory, and comply with the "new services test."[5] Under the new services test (as clarified by the FCC over time), the costs are to be "forward looking" and the baseline for the cost calculation is to be direct costs, to which reasonable overhead (defined as joint or common costs) may be added.[6]

Subsequent to these rulings, Verizon and other BOCs filed tariffs, which were considered by the relevant state commissions. In Vermont, the Board approved Verizon's tariff filing on March 24, 1997. Various state rulings engendered requests from PSPs for further guidance from the FCC, which led to the *Wisconsin Orders*. The FCC has stated that these orders clarified the

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3. These orders include: *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20,541, (Sept. 1996) ("*First Payphone Order*"); *Order on Reconsideration*, 11 FCC Rcd 21,233 (Nov. 1996), aff'd in part and remanded in part, *Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d555 (D.S. Cir. 1997) ("*Reconsideration Order")*; *Limited Waiver Order of the FCC's Interstate Tariffing Requirements,* DA 97-678 (April 1997) ("*First Waiver Order")*; *Limited Waiver Order of FCC Requirements of Intrastate Tariffs Comply with NST,* DA 97-805 (April 1997) ("*Second Waiver Order*"). Also, *In the Matter of Wisconsin Public Service Commission: Order Directing Filings*, 15 FCC Rcd 9978 (Comm. Car. Bur. 2000)("*First Wisconsin Order*"), and *Memorandum Opinion and Order*, 17 FCC Rcd 2051(2002)("*Second Wisconsin Order*"). These are collectively referred to as the *Payphone Orders*."

4. *First Payphone Order*, ¶147 and n. 508.

5. *Order on Reconsideration*, ¶ 163; *First Waiver Order*, ¶ 2; 47 C.F.R. § 61.49(g)(2).

6. Wood pf. at 34.

meaning of the previous FCC decisions, although the subsequent orders are not the sole reasonable interpretation of the previous FCC rulings. Under present requirements, the parties generally agree that the analysis of the PAL rates must meet the following criteria:

1. The rates must be cost-based, with direct costs calculated using a forward-looking economic cost methodology, such as Total Service Long Run Incremental Cost ("TSLRIC") or Total Element Long Run Incremental Cost ("TELRIC"). The Incumbent local exchange carriers ("ILECs") may include overhead loadings that are shown to be reasonable, including retail costs attributable to payphone service (since payphone access line service provided by an ILEC is a retail service). The cost inputs used to create the rates should also be consistent with the cost inputs used in computing rates for other wholesale services. Moreover, the ILEC has the burden of demonstrating the reasonableness of its methodology, including its overhead loadings.[7]
2. The rates must be consistent with the requirements of Section 276 of the Act with regard to, for example, the removal of subsidies from exchange and exchange access service.[8]
3. The rates must be nondiscriminatory.
4. The rates must comply with the FCC's Computer III tariffing guidelines, specifically, the "new services test;"[9]
5. The rates must take into account other sources of revenue (e.g., the SLC) that "are used to recover the costs of the facilities involved."[10]

Pursuant to Federal law, if the Board finds that the current PAL rates exceed the levels determined by the above stated criteria, then the Board must reduce rates to fall within a range consistent with these mandates. Notwithstanding this requirement, the Board does have a considerable amount of discretion in analyzing the facts before it related to these criteria, just as it would have in any case where the application of externally set guidelines is applied to the facts. Based on all of the filings in this docket, the major conflict between the parties can be

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7. *First Wisconsin Order* at ¶¶ 9–11; *Second Wisconsin Order* at ¶¶ 24, 43, 50.
8. *Second Wisconsin Order* at ¶ 14.
9. NEPCC Initial Brief at 5; Behrle pf. at 6.
10. Wood pf. at 12–13.

summarized as disagreements regarding the cost methodologies used by Verizon and NEPCC to determine appropriate public access line rates. The Board's task is to determine the rates that are just and reasonable and comply with federal law.

Based on the substantial evidence in the record and the testimony presented at the hearing, I hereby report the following findings to the Board in accordance with 30 V.S.A. Section 8.

IV. Findings of Fact

1. PAL Service is used when the service provider (such as Verizon) deploys a "smart" coin or coinless payphone. In these cases, the payphone intelligence is built into the payphone. PAL service is predominantly used by independent PSPs. Behrle reb. pf. at 17.

2. Public Access Smart-pay Line ("PASL") Service is used when the PSP deploys a "dumb" coin or coinless set. In these instances, the payphone intelligence resides in the ILEC central office. Behrle reb. pf. at 17.

3. A PAL or PASL line requires a business loop and a port at the central office switch. Certain PASL functionalities require additional investment to facilitate central-office-based payphone functionality. Behrle reb. pf. at 18–19.

4. Local usage is provided to PAL and PASL customers in the same manner as it is provided to retail residential customers. Behrle reb. pf. at 20.

A. General Policy Findings

5. Payphones are an important aspect of community infrastructure, playing a role in Vermont's economy, public safety, and general welfare. Lackey pf. at 3; Docket 6012, Order of 12/28/99 at Finding 1.[11]

6. The Public has come to rely on the availability of payphones just as it relies on other public services like transportation and law enforcement. Lackey pf. at 3

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11. Docket No. 6012 , *Generic Investigation into the Transition from Regulation to Competition for Public Telephone Service In Vermont.*

7. In those geographic areas of the state where cellular coverage is unavailable, and for certain groups of customers in all areas of the state, payphones represent an important (and often vital) "last resort" means of communication. Wood pf. 11/18/03 at 18.

8. The public good is promoted by the continued availability of payphones, and would be further promoted by an increase in the number of payphones available as well as a greater geographic dispersion of payphones. Lackey pf. at 3.

9. The number of payphones in service in the Vermont service area served by Verizon has decreased substantially and steadily since 1996. For example, at the end of the first quarter in 2001, there were 3,406 public access lines in Vermont, but by the end of the third quarter in 2003, there were only 2,451 public access lines in Vermont. Lackey pf. at 3–4.

10. The reduction in payphone access lines has in part been due to a provision of the Telecom Act that precluded the maintenance or creation of the implicit subsidies from intrastate regulated services to retail payphone services. Some portion of the payphones that Verizon had installed prior to the Act were not economic on a stand-alone basis, and Verizon was free, subsequent to the Act, to remove those phones. Lackey pf. at 4.

11. The removal of payphones has posed a hardship for the general public, and in particular for people who cannot afford a private phone line. Lackey pf. at 4.

12. PAL rates represent a substantial share of a payphone service provider's fixed costs. Lackey pf. at 4.

13. The viability of a given payphone location is affected by the charges that the payphone provider must pay to the ILEC for an access line, local usage, and features. Wood pf. 11/18/03 at 18.

14. A lower monthly charge would make some currently non-viable payphone locations viable. The result would be an increase in the current number of payphones or a reduction in the number of payphones that are removed from service in the future. Exh. DPS-1.

15. Reducing PAL rates would also reduce the number of calls necessary to make a particular payphone location viable. A reduction in the wholesale rates will reduce the revenues and call volume levels at which a payphone becomes marginally profitable. A decrease in the

wholesale cost of payphone lines will improve the economics of payphone deployment. Lackey pf. at 5.

16. The competitive payphone service providers have available a pool of phones that they would like to place somewhere if it were economically viable to do so. Tr. 4/2/04 at 73 (Wood).

B. Cost Analyses

17. The PAL rates are based upon the assignment of three categories of costs. Direct costs are those costs that are specific to the service or individual rate element being studied. Shared costs are caused by the decision or requirement to offer a group of services. Common costs are caused simply by the fact that the company is in business and represent costs that would still be incurred if any one product or service were discontinued. Wood pf. at 21; Behrle reb.pf. at 20-22.

18. Local usage is provided to PAL and PASL customers in the same manner as it is provided to retail telephone users. Service to PAL and PASL customers has different costs than for other telephone customers due to different holding times for calls. Behrle reb. pf. at 20.

19. Under the FCC's new services test, "overhead" includes both shared and common costs (i.e., amounts in excess of the direct costs). Wood pf. at 14, 21.

20. A portion of the costs of Verizon's payphone service is recovered through the SLC. Wood pf. at 26.

21. Verizon's PAL rates are significantly in excess of the level permitted by the FCC and need to be reduced to comply with the federal law. Wood pf. at 43; Behrle pf. at 23.

22. Either of the methodologies proposed by Verizon or NEPCC would substantially reduce Verizon's payphone access rates overall. Tr. 4/2/04 at 180 (Lackey).

23. Verizon performed a TSLRIC Payphone Service Cost Study that examines the long-run, forward-looking, incremental costs associated with the provision of payphone services. The components of the study include the direct costs of the loop, port, features, and usage. Each cost component is organized to identify the direct, shared, and common costs that, together, constitute the total cost of the service. Behrle pf. at 16.

24. Verizon's cost study categorized shared costs as directly attributable costs rather than as common costs. These include costs such as conduits and poles for loops and unused central office switching capacity for local usage. Behrle supp. reb. pf. at 1–4.

25. Verizon developed specific costs for each of the four categories of payphone service: PAL; Basic Coin Access Line ("BCAL"); Charge-A-Call; and Inmate. Costs were also developed for the stand-alone payphone specific applications of Direct Dial Screening and Local Usage. Behrle pf. at 17; exh. Verizon-1.

26. Verizon's cost study identified the forward-looking investments necessary to provide the various payphone services and converted them into direct costs by the application of annual (2002) charge factors ("ACFs"), which reflect the appropriate cost of money, depreciation, taxes, and other direct expense parameters. The study also developed shared costs through the application of shared-cost ACFs. Also, Verizon applied a common overhead factor of 6.47% to the subtotal of direct and shared costs to recover Verizon's expected common costs in proportion to the unit investments necessary to provision payphone services and features. Finally, Verizon applied a general revenue loading factor (2.43%) to each component of costs — direct, shared, and common — to recover Verizon's regulatory assessments and on-going uncollectibles. Behrle pf. at 20-21.

27. Verizon did not conduct a specific study to identify the retail costs. Behrle supp. reb. pf. at 6.

28. NEPCC bases its recommended rates on Verizon's UNE cost study for both line and usage costs, which was based on the TELRIC[12] methodology. Wood supp. pf. at 12.

C. Retroactive Application of Reduced Payphone Rates

29. Verizon has had state tariffs for the provision of payphone services by PSPs using PAL lines for "smart" payphones since the mid-1980s. PAL rates have historically been the same as business basic exchange lines, except that PALs do not qualify for the maximum cap associated with local usage charges. Behrle pf. at 9.

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12. "TELRIC" is Total Element Long Run Incremental Cost.

30. On December 31, 1996, Verizon filed an intrastate tariff (Tariff Filing No. 2443) for basic payphone lines that rely on network-provided capabilities to PSPs who use "dumb" customer premises equipment. These PASL services provide the same access line functionality used by Verizon to provision its own payphone services. There are four access line variants included in the PASL category: BCAL-1; BCAL-2; Charge-A-Call; and Inmate. The rate for these services were based on the existing Board-approved, tariffed rates for PAL exchange service, screening, and call restriction elements, with the additional cost of providing the coin function and contribution. *Id*.

31. The Board approved this tariff filing on March 24, 1997, after a review and recommendation from the Department. *Id*.

32. In response to the FCC's *Second Waiver Order* that clarified that the "new services test" applied to both federal and state tariffs for basic payphone services and features, Verizon advised the Board by letter dated May 16, 1997, of its compliance with these requirements. Specifically, Verizon showed that its existing rates for payphone services recovered the direct costs plus a reasonable contribution to overhead costs. At the same time, Verizon notified the Board that it intended to file, on or before May 19, 1997, new tariff provisions necessary to bring certain feature elements into compliance with these federal standards. *Id*. at 10.

33. On May 19, 1997, Verizon filed a revised intrastate tariff for PAL blocking and screening features. Following Department review and recommendation dated August 14, 1997, the Board approved this tariff filing on September 9, 1997. *Id*.

V. DISCUSSION

The Board's task in this docket is to establish the rates that PSPs must pay for the access line provided by the local exchange carrier. However, this focus is guided by the broader policy objectives set out in § 276 of the Act: "[to] promote competition among payphone service providers and promote the widespread deployment of payphone service to the benefit of the general public . . . ."[13] Notwithstanding the Congressional intent to expand payphone deployment, the number of payphones deployed in Vermont in the last few years has declined. A

13. 47 U.S.C. § 276(b)(1).

major factor (and probably the most significant factor) in this decline is the increased availability and use of cellular phones. At the time the Act was enacted, the cell phone market was limited to outside urban areas and prices were high. Now, cellular service is more widespread and the service bundles purchased by most consumers convert the usage charges into fixed charges.

Nonetheless, cellular service is not a fully reliable alternative to payphones. In Vermont, cell phone coverage is such that it cannot be depended upon in many places. Additionally, low income residents may depend on payphones for their connections to community services, employment opportunities, and public safety agencies. The public good is promoted by the continued availability and widespread deployment of payphones.

The FCC's Orders and, more specifically, their mandate to set PAL rates closer to cost, reflect the importance of payphone availability. Although cell phones are likely the principal cause of the declining numbers of payphones, PAL rates also have contributed. A decrease in the wholesale cost of payphone lines will likely improve the economics of payphone deployment (and reduce the number of calls necessary to make a particular location viable) and, therefore, facilitate additional deployment (or at least help maintain the existing numbers of payphones). For example, the evidence presented here suggested that by dropping the Monthly Line Charge from the current price to what NEPCC believes are cost-based levels, the per-call revenue needed to make a payphone location viable would decrease by 20–25%.[14]

At the same time, PAL rate reductions should not be seen as a panacea; price reductions may not increase payphone availability or even stem the current trend towards reduced payphone availability. The evidence does not demonstrate that reduced PAL costs leads directly to more deployment. In fact, no clear patterns arise from the experience in other states. This experience suggests that it is possible that large rate reductions will actually produce minimal public benefit, while reducing revenues to Verizon. Therefore, there is no clear benefit to setting rates artificially low. Instead, the Board should set rates that ensure that PSPs continue to cover the

14. Exh. DPS-1. The fact that a decrease in the PAL rate of more than 50% would impact the revenue needs by less than 25% indicates that, while the rates comprise an important component of the cost structure, other costs play a very significant role in a PSP's deployment decisions.

ILECs' long-run, forward-looking costs of providing payphone service to PSPs (including Verizon's own payphone service).

A. Payphone Rates

As discussed above, the FCC has mandated the use of a forward-looking cost methodology in setting payphone access line rates. The FCC has defined "cost-based" as compliance with the "new services" test established in *Computer III*.[15] That test requires that rates must be based on the "direct cost of providing the new service as a price floor" and must recover "a reasonable amount of overhead."[16]

NEPCC and Verizon each used a different methodology to develop the payphone access line rates that ensure that payphone line rates are cost-based and consistent with federal law. Verizon based its cost study on the TSLRIC methodology. NEPCC conducted an analysis based upon the TELRIC methodology. Essentially, NEPCC used the rates set out in Verizon's Statement of Generally Available Terms ("SGAT"), which the Board previously approved in Docket 5713 based upon a cost study. The results of those studies are as follows.

Summary of Proposals			
	Existing Rates[17]	Verizon Proposed	NEPCC Proposed
Public Access Lines lines	$32.00	$16.57	$15.31
Public Access Smart Lines	$41.30	$18.51	
PASL lines (Inmate and Charge-A-Call)	$37.50	$17.01	
Peak Minutes of Use	$0.22	$0.259	$0.008109
Off-Peak MOU	$0.005	$0.0059	$0.008109

15. *Payphone Reconsideration Order* at 162.

16. *First Wisconsin Order* at ¶ 12.

17. Verizon Exh. III; Wood pf. at 43. Verizon's rates assumed that an added $6.45 per line would be recovered through the SLC. NEPCC included the SLC in its rates.

Verizon argues that the FCC has made it clear that payphone services offered to PSPs are retail rather than wholesale services. Additionally, Verizon argues that there are significant differences in the type of costs that it incurs between providing retail and wholesale service. Further, in the FCC's most recent iteration of the "new services" test in the *Wisconsin Order*, Verizon maintains the FCC ruled that the TELRIC wholesale pricing methodology, while not prohibited, need not be applied to payphone service rates and the TSLRIC methodology is appropriate and consistent with the new services test.[18] Therefore, Verizon concludes that its proposed retail rates for payphone services are properly based on the forward-looking TSLRIC methodology and that there is no justification for the Board to impose a TELRIC-based wholesale pricing regime on these retail services. Verizon also maintains that use of UNE-based rates is inappropriate because they are not representative of Verizon's costs for provisioning UNEs or retail services.[19]

NEPCC argues that the TELRIC methodology is better suited for establishing the costs of PAL lines because the provision of these access lines to PSPs is more like a wholesale service than a retail service. NEPCC argues that the TSLRIC methodology used by Verizon in its cost study is not credible in light of the requirements of the *Payphone Orders* and the Board's prior directives related to Verizon's costs (both direct and overhead) of providing the various rate elements that are components of PAL service. NEPCC maintains that the Board's decisions approving UNE rates for Verizon provide the most recent guidance on acceptable and tested costs and overhead loadings for PAL rate elements (see Docket 5713). Further, in regard to adding an additional markup for marketing and billing costs, NEPCC suggests that because wholesale marketing and billing costs are included in Verizon's UNE costs, these costs can reasonably serve as a proxy for the costs actually incurred by Verizon to provide PAL Service.[20]

NEPCC further suggests that the sizeable differences between Verizon's proposed rates and NEPCC's rates cannot be explained or justified based on the fundamental differences between the TSLRIC and TELRIC methodologies. NEPCC indicates that the FCC has

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18. *First Wisconsin Order* at 49.
19. Behrle reb. pf. at 26.
20. Wood supp. pf. at 12.

determined that TSLRIC and TELRIC are the same methodology with a different cost object. Consequently, properly applying the TSLRIC methodology should yield no more than the result of the calculation of direct cost when applying TELRIC. NEPCC asserts that there are, however, two recognized distinctions between these methodologies. The first is that a TELRIC analysis does not consider the retail costs of service that can be added in the context of a TSLRIC analysis if the costs are attributable to the service. Another possible distinction relates to direct costs in a TELRIC analysis that are more properly considered shared costs when applying the TSLRIC methodology. An example is "a local loop might be treated as shared among multiple services that are provided using that loop, such that the TSLRIC for any of the services would include a portion of the loop as a shared cost. In contrast, a UNE loop study would, by definition, treat that facility as a direct cost."[21] This leads NEPCC to conclude that properly applying this distinction can never lead to an increase in direct costs under TSLRIC. "TSLRIC can never be more than TELRIC because you can never attribute more than a hundred percent of the network function . . . ."[22] Consequently, NEPCC asserts that there are no fundamental distinctions between TELRIC and TSLRIC, and to the extent that there are any differences, they do not explain the wide difference between Verizon's and NEPCC's proposed PAL rates.

The Department did not undertake its own cost study, and did not endeavor to propose an alternative set of rates to those proposed by Verizon and NEPCC.[23] However, the Department did suggest that the Board could consider the two methodologies presented and give weight to each and incorporate specific assumptions as appropriate.[24] Additionally, the Department posits that the Board could direct Verizon to revise its cost study using different factors or assumptions.[25]

Fundamentally, the issue of whether to use a TELRIC or TSLRIC methodology for establishing PAL rates is more semantic than real. For the most part, there is little difference

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21. Wood supp. pf. at 7-8.
22. Tr. at 83 (Wood).
23. Tr. 4/2/04 at 173 (Lackey).
24. Tr. 4/2/04 at 179 (Lackey).
25. Tr. 4/2/04 at 180 (Lackey).

between the TSLRIC and TELRIC methodologies as they might be used to develop PAL rates.[26] The FCC has also made clear that use of either methodology is acceptable.[27] The primary difference is that the TSLRIC study incorporates the cost of marketing and billing. In addition, Verizon's analysis includes retail overhead, which is permitted under the FCC's *Second Wisconsin Order* (¶ 50).[28] Thus, development of rates using TELRIC, with appropriate adders for a reasonable amount of overhead, should result in rates that are similar to rates developed using TSLRIC, assuming that the basic cost inputs and assumptions are similar. In this case, Verizon has used a TSLRIC methodology, while NEPCC relies upon the SGAT rates developed using TELRIC. Nonetheless, these two parties produced significantly different results, attributable not to the methodologies, but to the different cost inputs and assumptions each used. In large part, Verizon's study varies from the UNE rates because Verizon's TSLRIC methodology is not consistent with the standards the Board has adopted previously. Verizon has made clear that it disagrees with the portions of the Board's cost-methodology from Docket 5713.[29]

NEPCC's study starts and ends with the UNE rates approved by the Board in Docket 5713 in 2000, which are now reflected in Verizon's SGAT. These cost assumptions and inputs are now many years old. Verizon's new TSLRIC analysis is not based on the original underlying inputs and assumptions that were used to develop the UNE rates; rather, it is based on a study that updated many of these underlying cost inputs and assumptions. It also includes both overhead costs and retail costs of providing payphone services.

Flaws exist in the analysis of each party. NEPCC bases its analysis upon Verizon's filed TELRIC rates in the SGAT. However, Verizon has presented uncontested evidence that the costs that underlie those rates (which were based upon costs in the mid-1990s) have changed.[30]

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26. Wood supp. pf. at 7.
27. *Second Wisconsin Order* at ¶ 49 ("It is consistent with the *Local Competition Order* for a state to use its accustomed TSLRIC methodology (or another forward-looking methodology) to develop the direct costs of payphone line service costs.")
28. Wood supp.pf. at 8.
29. Wood supp. pf. at 10; tr. at 115, 127–129 (Behrle).
30. *See* tr. 117–126, 140–142 (Behrle).

NEPCC made no attempt to update its cost numbers to incorporate such changes.[31] NEPCC also did not fully reflect the terms and conditions of the SGAT when applying the rates set out therein. For example, NEPCC incorporated only one switching element in its calculation of the local switching charge even though the SGAT mandates that interoffice calls be charged for two such elements.[32]

Furthermore, NEPCC also based its cost assumptions on the distribution of PAL lines among urban, suburban, and rural zones and did not consider either PASL lines or business lines as a whole.[33] These distribution assumptions directly affect which SGAT rates for UNEs apply; because the zone distribution of PAL lines is more urban-oriented than the distribution of PASL lines, focusing only on PAL lines (which PSPs other than Verizon use) skews the cost analysis in favor of lower costs.[34] Since PAL and PASL lines are functionally the same (except for the switch intelligence provided for PASL lines),[35] the distribution should have incorporated both to reflect the costs of the payphone service. Finally, while relying upon Verizon's TELRIC-based UNE rates, NEPCC used retail marketing and billing cost estimates based upon Verizon's TSLRIC study, not TELRIC. Incorporating the TELRIC-based costs for these functions would result in an adder that is significantly higher than the 5.6 percent adder that NEPCC includes.[36] It is also not clear that NEPCC included a reasonable amount of overhead in its rate analysis. Exhibit DJW-3 (p.2) suggests that the rates include overhead. However, the calculation appears to take UNE rates directly and then add two cost items. Since the UNE rates do not include corporate overhead, there appears to be no incorporation of overhead.

I also have concerns with Verizon's proposal. For example, Verizon's study finds that the cost for an analog line port used to provide PAL service is $3.89, compared to the existing UNE

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31. Neither party presented any evidence on the magnitude of these underlying cost changes that would enable the Board to determine what proportion of the difference between Verizon's and NEPCC's positions is attributable to these updated costs.

32. Tr. at 35–39 (Wood).

33. Tr. at 39 (Wood).

34. Tr. at 46–47 (Wood). Under the SGAT, urban loop rates are lower than those for suburban and rural zones. Exh. NEPCC-DJW-3, p.2.

35. Tr. at 42–43 (Wood).

36. Behrle supp. pf. at 8.

rate of $1.03.[37] Yet Verizon provides no explanation for the large difference in costs that result from these two methodologies.[38]

Verizon also has not demonstrated that many of the changes, including the cost and methodological changes, from the TELRIC study to the TSLRIC study were appropriate.[39] To the extent that these changes simply reflect changes in the actual costs of providing facilities, such an update is appropriate. Similarly, it is reasonable for Verizon to add overhead expense associated with retail services and other costs that would normally be included in a TSLRIC analysis but were not included in the TELRIC study. Verizon also reasonably adjusted the analysis to remove the costs savings that the Board imputed for the mergers of Bell Atlantic and NYNEX and then Bell Atlantic and GTE; these transactions have now been finalized so the cost savings are embedded in other costs.[40]

Verizon has not shown, however, that other changes are appropriate. Verizon's updated studies contain adjustments that are not simply updates but instead represent changes in the methodology that the Board directed Verizon to use in Docket 5713. For example, Verizon employed a different network topology than the Board has required the Company to incorporate into the TELRIC study. Verizon has not, however, demonstrated why such changes are appropriate. More importantly, Verizon used significantly higher assumptions for return on equity than had been employed in Docket 5713. Verizon also used a different capital structure. The Board specifically considered both of these issues in Dockets 5713 and again in 6167 (in which the Board adopted Verizon's Incentive Regulation Plan)[41] and established both an ROE and appropriate capital structure for ratemaking purposes. More recently, the Board's Proposed Order in Docket 6959 (a Successor Incentive Regulation Plan) reaches conclusions similar to

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37. Wood supp. pf. at 5.

38. It is hard to imagine that the $2.86 difference relates to the cost of providing retail rather than wholesale services.

39. Verizon updated inputs related to investments, depreciation, general revenue loading factor, maintenance savings, merger savings, directly attributable shared cost factor, common cost overhead factor, retail costs, income tax, property tax, fill factor for outside plant, switch vendor discounts, and switch process or utilization.

40. Tr. at 122, 148–149 (Behrle).

41. Tr. at 176 (Lackey).

those set out in the previous decisions.[42] Verizon has presented no evidence that would suggest that it is appropriate to vary these two factors. This flaw is significant; Verizon testified that the cost of capital, the debt-equity ratio, depreciation, and the income tax all account for a large portion of the difference between the TSLRIC and the TELRIC results.[43]

Verizon also has not established that the retail costs that it includes in its study are reasonable. According to Verizon, the Company incurs proportionately the same retail-type costs for PSPs as it does for other retail services. These include costs associated with operating retail centers, providing retail billing and maintaining a dedicated customer operations center.[44] I agree with Verizon that it is reasonable to incorporate retail costs into the PAL rates and that the cost of providing payphone service is likely to exceed the wholesale costs included in the UNE rates. However, Verizon presented insufficient evidence to buttress its assertion that these added costs are equivalent to those incurred serving other retail customers. For example, Verizon's study includes costs for product advertising in its retail cost estimate, even though these are unlikely to be needed for payphone services.

The methodological flaws cited above mean that neither the rates proposed by NEPCC nor by Verizon are reasonable. Correcting these errors would have the effect of increasing the cost developed by NEPCC and decreasing Verizon's proposed PAL rates, significantly narrowing the gap between the two analyses. Unfortunately, the parties presented their studies in a manner that makes direct comparisons difficult. While pointing out errors in the study performed by the other, neither NEPCC nor Verizon offered evidence that would clearly identify which elements of the opponent's study to modify and by how much. Thus, the current evidentiary record provides insufficient basis to recalculate the appropriate PAL rates; the just and reasonable rates lie somewhere between those proposed by these two parties.

Considering the evidentiary record, I am left with three choices. First, as NEPCC has pointed out, the burden of proof on many of these elements lies with Verizon. Verizon has not met that burden. Thus, I could rely upon the only remaining evidence — NEPCC's study. Due to

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42. Docket 6959, Proposed Order of 7/21/05.

43. Tr. at 147 (Behrle).

44. Behrle supp. reb. pf. at 6.

the flaws that I have cited above, however, the result produces rates that are known to be too low. Such rates do not fairly compensate Verizon for the cost of its facilities. Moreover, the public policy benefits of reducing payphone costs to encourage more payphone retention (or deployment) do not outweigh the need to have rates that compensate Verizon.

A second option would be to require Verizon to reproduce its TSLRIC study consistent with the analysis set out herein. In such a refiling, Verizon would need to explain the differences from the previous TELRIC study that the Board has accepted and justify both its overhead and retail cost loadings. This option is quite costly, both in terms of expense to Verizon and NEPCC and time to complete a new analysis and resolve disputes.

The third option, which I recommend the Board adopt, is to adopt a rate that recognizes that the correct rates lie between those proffered by the parties. The adjustments necessary to correct the analyses of PAL costs will reduce the PAL rates put forward by Verizon while increasing those advocated by NEPCC. Thus, rather than engaging in further cost studies and litigation to fully examine these inputs in detail to produce a fully tested result, I recommend that the Board designate payphone line rates that are approximately mid-way between the recommendations of NEPCC and Verizon. This results in rates that are very close to the results that further studies and litigation would probably produce (since, as noted above, the effect of correcting the errors I cite is to narrow the differences). Considering that the number of PAL and PASL lines that are directly affected by the rates set in this proceeding are relatively small (just over 300 PAL lines, for example) and that the price differences that remain (and are likely to remain after further studies) are relatively small, the costs and time for further studies and litigation appears to be unreasonable. Payphone rates that are reasonably close to Verizon's current forward looking costs, but that are significantly lower than Verizon's existing payphone rates would promote the general good of the state. Specifically, I recommend the following rates (exclusive of the SCL):

Public Access Lines	\$12.72
Public Access Smart Lines	\$14.66
PASL (Inmate and Charge-A-Call)	\$13.16

The parties also contest the usage rate for PAL lines. Verizon recommends increasing rates from $0.022 to $0.0259 for peak minutes, and from $0.005 to $0.0059 for off-peak minutes. NEPCC recommends that all minutes of use should be priced at $0.008109, based on the UNE wholesale rates approved in Docket 5713. Both parties' analyses suffer the flaws set out above. In addition, however, we must consider that call durations for payphone calls are generally shorter than those for other calls. Verizon shows an average duration of only 1.782 minutes per call; by comparison call times for customers as a whole are closer to four minutes per call.[45] The evidence clearly shows that call setup times for the first minute are substantially greater in cost than subsequent minutes.[46] Thus, the actual costs for usage would be substantially above that set out in the SGAT. Verizon's cost estimates, while high, reflect the disproportionate impact of call setup on the cost of providing service to PSPs. Accordingly, I recommend that the Board retain the existing usage rates, which are consistent with existing local measured service rates for residential and business minutes of use.

B. Application of the Newly Established PAL Rates

The remaining issue is the effective date of the proposed rates. NEPCC takes the position that, because Verizon's PAL rates did not comply with the FCC's Orders as of April 15, 1997, the FCC's *Payphone Orders* require that the Board make the rates retroactive to that date. NEPCC states that the FCC required Verizon to have in effect valid PAL rates that complied with FCC requirements by April 15, 1997, in order to qualify for dial-around compensation[47] for Verizon's payphones. According to NEPCC, companies could seek a waiver of this date, but only subject to the condition that once the rates came into compliance, refunds would occur. NEPCC maintains that Verizon's rates were never in compliance with the FCC requirements, so that the FCC rules mandate a refund of excess revenues since April 15, 1997.

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45. Exh. Verizon-2.

46. Verizon estimates the cost of the first minute to be approximately 4.4 times higher than for subsequent minutes. Exh. Verizon-3.

47. Dial-around calls are calls made using payphones for which the PSP receives no compensation, such as access code calls and subscriber 800 and other toll-free number calls. *See First Payphone Order*, ¶¶ 52–54.

Verizon asserts that the FCC orders do not require a refund back to 1997. Verizon also contends that there is no evidence that the Company was not in compliance with applicable state and federal law requirements. Verizon also raises several state law claims, maintaining that a refund violates the prohibition against retroactive ratemaking and that, pursuant to 30 V.S.A. § 227(b), refunds can only date back to April 18, 2004 (which is seven months after the Board initiated this proceeding). Finally, Verizon argues that NEPCC's claim is precluded under the principles of laches and waiver.

The Department recommends that the refunds date back to September 23, 2002, the date on which NEPCC filed its original petition. The Department argues that refunds dating back to 1997 are not required by federal law and would violate the principle of retroactive ratemaking. However, as a matter of fairness, the Department maintains that the Board should make the refunds effective earlier than the April 18, 2004, date put forth by Verizon.

In the *First Payphone Order*, the FCC required incumbent LECs to provide coin service so that competitive payphone providers could offer services using "dumb" payphones. The Order directed LECs to provide the coin transmission service on an unbundled basis, priced according to the new services test.[48] However, the FCC also made clear that the pricing rules for unbundled network elements did not apply to such services.[49] The FCC also linked these requirements to the payment of compensation for dial-around calls.

In the *Reconsideration Order*, the FCC clarified this linkage, stating that, among other requirements, Verizon would be eligible for such compensation only after "it has in effect intrastate tariffs for basic payphone services (for 'dumb' and 'smart' telephones)."[50] In addition, the FCC prescribed requirements for intrastate tariffs, specifying that they must be cost-based, consistent with the requirements of Section 276 of the Act by removing subsidies, and nondiscriminatory. LEC intrastate tariffs were required to be filed by January 15, 1997, and effective by April 15, 1997.[51] The FCC also reiterated that the new services test would apply to such tariffs.

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48. *First Payphone Order*, ¶ 146.
49. *First Payphone Order*, ¶ 147.
50. *Reconsideration Order*, ¶ 131.
51. *Reconsideration Order*, ¶163.

On April 4, 1997, the Chief of the FCC's Common Carrier Bureau issued the *First Waiver Order*. In that ruling, the FCC repeated many of these provisions, stating that LECs must be prepared to certify that they had complied with the previously enunciated standards in order to receive compensation.[52] Eleven days later, the Common Carrier Bureau issued its *Second Waiver Order.* In that Order, the FCC granted LECs a limited waiver until May 19, 1997, to file intrastate tariffs for payphone services that complied with FCC requirements. This waiver, however, came with a significant condition:

> a LEC who seeks to rely upon the waiver granted in the instant Order must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tarriffed rates, when effective, are lower than the existing tariffed rates.[53]

Several clear mandates came out of these Orders. LECs were under an obligation to file tariffs complying with the FCC's standards by April 15, 1997. At that point, they had to certify compliance in order to obtain compensation. LECs that did not comply by this date were granted a limited waiver, to which attached the requirement for refunds. Significantly, the FCC did not provide for refunds in any other circumstance.

Applying these Orders to the circumstances before the Board, I cannot conclude, as NEPCC asks, that refunds must be retroactive to April 15, 1997. Verizon filed its intrastate tariff on December 31, 1996. No party objected to the tariff and, based upon the Department's recommendation, the Board approved the tariff on March 24, 1997.[54] In addition, subsequent to the *Second Waiver Order*, Verizon filed a letter stating that it complied with the new services test.[55] Verizon did not, however, seek a waiver of the April 15, 1997, deadline for effective tariffs, thus the mandate for refunds does not apply. Based upon these facts, I find no basis to conclude that FCC rules require a refund.

I recognize that, based upon the evidence presented in this proceeding, Verizon's tariffs did not fully comply with the new services test. However, no party objected to the tariffs at that

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52. *First Waiver Order,* ¶¶ 29–30.
53. *Second Waiver Order*, ¶ 3.
54. Behrle pf. at 9–10.
55. Behrle pf. at 10.

time. In addition, Verizon provided a specific representation that its tariffs were in compliance. Thus, the state tariffs became valid and effective filed rates.

More importantly, no party has shown that Verizon's tariffs in effect in 1997 were inconsistent with any specific FCC requirements related to payphones set out at that time. The FCC did require conformity to the new services test, but did not clarify how that would occur. Subsequently, the FCC (in the *Wisconsin Orders*) has enunciated clear and specific guidelines, but those were not specified in 1996 and 1997 nor were they necessarily implied. Any fair reading of the FCC requirements shows that the Wisconsin Orders go beyond the original standards (and are, in fact, much closer to the mandates of Sections 251 and 252, which the FCC stated explicitly would not apply).

Having concluded that federal law does not mandate refunds to April 15, 1997, it is necessary to consider state law requirements. Here, Vermont law clearly requires that the rate reductions ordered today take effect April 18, 2004. The record shows that Verizon had in place valid and effective tariffs by that time. The Board opened this investigation on September 18, 2003. Pursuant to Section 227(b) of Title 30, if the Board opens an investigation into the rates of a company, the rate reductions (if any) date back to the initiation of the investigation if the Board completes it within seven months. Otherwise, any rate reductions take effect seven months after the opening of the investigation (April 18, 2004). As this decision occurs after April 18, 2004, the rate reductions, and any resulting refunds, will take effect on that date.

The Department has argued for an earlier date on equitable grounds. There may be merit to the Department's argument. However, no party has cited any state law provision that would allow an earlier effective date. Rather, Section 227(b), coupled with the prohibition against retroactive ratemaking, limits the Board's authority to set rates for prior periods.

VI. Conclusion

I recommend that the Board require Verizon to significantly reduce both its public access line rates (inlcuding PASL rates) and the usage rates, consistent with the analysis set forth above.

To the extent these findings are inconsistent with any proposed findings, such proposed findings are denied.

The proposal for decision has been served on all parties to this proceeding in accordance with 3 V.S.A. Sec. 811.

DATED at Montpelier, Vermont, this 2nd day of September, 2005.

s/George E. Young

George E. Young
Hearing Officer

VII. Board Discussion

Verizon and the Department generally support adoption of the PFD, although Verizon raises two implementation issues that we address below. NEPCC asserts that the PFD falls short of the mandate of the FCC's payphone orders and raises a number of specific issues.

Network Access Rates

NEPCC raises several concerns with the Hearing Officer's rejection of NEPCC's proposed PAL rates and the analysis supporting them. NEPCC argues first that reliance upon the UNE rates from Verizon's SGAT is reasonable, since they remain the official Board-approved assumptions and inputs. NEPCC further asserts that it was reasonable in setting the PAL rate to base its proposal upon the geographic distribution of PALs in Vermont, rather than also reflecting the distribution of PASL rates. Additionally, NEPCC says that the PFD is incorrect in its conclusion that NEPCC's analysis did not include overhead, since overhead was incorporated into Verizon's SGAT rates. Finally, NEPCC states that the Hearing Officer should not have rejected NEPCC's proposed retail factor, arguing that it was Verizon's burden to justify a different figure.

We find the Hearing Officer's recommendations to be reasonable and adopt them. NEPCC is correct that the SGAT remains the Board-approved UNE rates. However, as the Hearing Officer found, Verizon presented evidence — that NEPCC did not rebut — showing that some of the costs that underlie those rates had changed. Although the Hearing Officer found that some of Verizon's asserted costs changes should not be reflected, he found others valid. We find this conclusion reasonable. As NEPCC did not reflect these cost changes (which include the overhead) in its study and Verizon did not present evidence that would enable us to adjust the SGAT prices upon which NEPCC relied, we have no meaningful way to adjust NEPCC's results. The PFD offers a reasonable alternative.

We are also unpersuaded that the Hearing Officer should have reflected only the distribution of PAL lines. The primary difference between PAL and PASL service is whether the PSP deploys smart payphones or relies upon the switch to provide the intelligence. This difference is reflected in the higher costs for PASL service. However, the underlying payphone line for PAL and PASL, and the basic payphone access service Verizon provides, is identical for both. Moreover, at any point, a PSP can switch from PAL to PASL service or vice versa. PSPs also compete with one another, which may also produce displacement of a PASL line with a Pal line. In light of these similarities, for purposes of assessing the costs of providing the basic payphone connectivity, it makes more sense to base the rates on the distribution of payphone lines as a whole.[56]

NEPCC's arguments concerning retail rate factors is also unpersuasive. NEPCC's proposed rates did include a retail factor. However, this factor was simply the amount included in Verizon's wholesale SGAT rates; it reflected provisioning of wholesale, not retail services.[57] Unlike the provision of UNEs to CLECs, the FCC has clearly ruled that service to PSPs is retail, not wholesale. NEPCC did not reflect these incremental retail costs.

<u>Local Usage Rates</u>

NEPCC also faults the Hearing Officer's recommendation to set the usage rate at the present local measured service rate. NEPCC asserts that the FCC has specifically rejected the assumption that local usage rates mirroring business rates comply with FCC mandates. In addition, NEPCC maintains that the only stated error in NEPCC's analysis has little financial impact. Finally, NEPCC argues that the Board should, at a minimum, apply the same "mid-point" approach that the PFD uses for the PAL line.

NEPCC's assertion that the Hearing Officer rejected NEPCC's proposal based upon a single, minor error is incorrect. The flaw cited by NEPCC is relatively small. However, NEPCC's analysis of usage rates also suffers from the broader concerns raised by the Hearing Officer, namely that it uses Verizon's SGAT rates as its basis. As we accept the PFD's conclusion that the costs underlying these rates have changed, without more detailed factual evidence of the specific costs changes, we cannot find them to be a reasonable foundation for setting rates.

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56. Considering the fact that lower payphone rates may encourage more deployment, it may have been appropriate to reflect the likely distribution under the new rates. No party presented evidence on this issue.

57. Exh. DJW-3 at 2.

We recognize that the FCC has concluded that usage rates equivalent to local measured service rates cannot be assumed to meet the FCC's requirements. However, the PFD did not adopt these rates simply by assuming that they were correct, as NEPCC implies. Rather, the Hearing Officer concluded that neither NEPCC nor Verizon had presented sufficient evidence to allow us to determine the precise cost-based rate. In addition, the evidence showed that the cost of usage at payphones is likely to be higher than the costs for usage from other customers, since calls from payphones have shorter durations (so that call set-up costs will be collected over a smaller base). In light of these differences, we find the PFD reasonable and accept it.

Retroactive Application of Rate Reductions

NEPCC maintains that the PFD is incorrect in recommending that the refund date back only to April 18, 2004, rather than April 15, 1997 (the required date for compliance with the FCC's payphone mandates). According to NEPCC, this result is mandated by federal law. NEPCC argues that, because the Board did not substantively assess Verizon's payphone rates, previously, the PFD has the effect of extending the FCC's compliance deadline by seven years. In addition, NEPCC asserts that the PFD is incorrect in suggesting that the *Wisconsin Orders* changed or added to the FCC's original requirements. NEPCC also contends that state law provisions that bar a refund dating back to 1997 are preempted by federal law. Finally, NEPCC states that changing the payphone rates does not constitute retroactive ratemaking since those rates were not set by a state commission after a hearing to assess compliance with Section 276 of the Act. NEPCC takes the position that Verizon's payphones were not lawful rates because they were not set by the Board.

To a large degree, NEPCC's arguments rest upon the assumption that, unless the Board evaluated Verizon's payphone rates in a formal proceeding, those rates were not legal. We cannot accept this premise. Prior to 1997, Verizon had in effect payphone rates. These were incorporated in tariffs filed by Verizon and approved by the Board. Verizon filed additional rates for PASL service in 1996 and revised tariffs for PAL blocking and screening features in 1997. The Board approved both of these rates. Moreover, Verizon, in May 1997, filed a certification with the Board that its rates complied with federal requirements. The Board, after considering this filing (which was also reviewed by the Department), did not initiate further proceedings to evaluate Verizon's rates.[58] This had the effect of leaving the previously approved rates in effect as valid. For purposes of state law, the preexisting rates and new rate elements became legal rates; in fact, Verizon had a state law obligation to charge these rates.

NEPCC is correct that the FCC's payphone rules established new standards for PAL rates. The FCC placed the duty on the states to implement these rules. The FCC did not, however, mandate that such an assessment occur in formal contested case proceedings, as NEPCC suggests. Thus, the Board's decision in 1997 not to initiate formal proceedings after reviewing Verizon's certification letter and the FCC requirements constituted acceptance of Verizon's rates at that time. Significantly, no one suggested then that the Board had a duty to conduct a more comprehensive or formal evaluation.

We also do not accept NEPCC's argument that the Board effectively has granted Verizon a seven-year extension of the 1997 deadline. The Board did evaluate the need to institute a formal review of the PAL rates at that time. Based upon Verizon's certification letter and the FCC's rules then in existence, the Board elected not to do so. This had the effect of setting Verizon's PAL rates, even if we did not conduct a contested case proceeding. In light of the subsequent clarifications in the *Wisconsin Orders*, that exercise of discretion may have been erroneous.[59] Nonetheless, it occurred and we must recognize the legal implications of our prior determination in today's Order, namely that Verizon's current rates have been valid.

<u>Implementation Issues</u>

The PFD recommended that Verizon be required to file revised tariffs within 30 days of the Board Order and issue a refund within 30 days after the tariffs become effective. Verizon states that it can meet this requirement if the Board issues its final Order by November 1.

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58. It would be reasonable to infer that the Board had insufficient basis to conclude that a formal investigation of Verizon's PAL rates was necessary.

59. NEPCC is also correct that the *Wisconsin Orders* did not change or add requirements. The PFD does not suggest otherwise. However, those Orders included clarifications that were not readily apparent from the Orders that had been issued in 1997.

Otherwise, Verizon maintains that it will require additional time. As we issue this Order within the time period requested by Verizon, no modification is needed.

Verizon also proposes a methodology for identifying customers entitled to refunds and issuing bill credits. No other party commented on this proposal, which we accept.

VIII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted.

2. Verizon shall file revised tariffs for payphone services consistent with this Order within thirty days of the date of this Order.

3. Verizon shall, within thirty days of the effective date of the revised tariffs filed as required by this Order, refund to payphone service providers all funds collected between April 18, 2004, and the effective date of the revised tariffs filed in response to this Order that are in excess of the rates approved in this Order.

Dated at Montpelier, Vermont, this 21st day of October, 2005.

s/James Volz)
) PUBLIC SERVICE
)
s/David C. Coen) BOARD
)
) OF VERMONT
s/John D. Burke)

OFFICE OF THE CLERK

FILED: October 21, 2005

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.